IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8358 of 1990
with
SPECIAL CIVIL APPLICATION NO.6584 OF 1990
with
CIVIL APPLICATION NO.7964 OF 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ADAMBHAI ISMAIL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8358 of 1990
MR SM MAZGAONKAR for Petitioner No. 1-3
MR.N.D.GOHIL, AGP for Respondent No. 1
MR YN OZA for Respondent No. 2-3
NOTICE SERVED for Respondent No. 4-11

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 13/09/2004

ORAL JUDGEMENT

Heard the learned Counsel appearing for the parties.

1. Special Civil Application no.8358 of 1990 has been filed by the petitioners challenging the action of the respondents in seeking to revert the petitioners from the post of A.D.E.I. i.e. Assistant Deputy Educational Inspector to their original post of Primary Teachers/Head Masters in the Primary Schools run by Bharuch District Panchayat. It is the case of the petitioners that they have been promoted to the said post of A.D.E.I. pursuant to regular selection for promotion. It is also the case of the petitioners that they are sought to be reverted to their original posts ignoring their seniority, and other relevant considerations.

2. Special Civil Application no.6584 of 1990 has been filed by the petitioners contending that they were selected and directly recruited to the said post of A.D.E.I. pursuant to regular selection process and their services are sought to be terminated by the respondents by order Annexure "C" collectively dated 30th August, 1990.

3. Ms. Rama I Fidelis, learned Advocate appearing for the respondents nos.2 and 3 in both the petitions has contended that it is true that the petitioners of Special Civil Application no.8358 of 1990 were promoted on regular basis and that petitioners in Special Civil Application no.6584 of 1990 were recruited directly. However, on account of reduction of number of posts it has become necessary to revert the promotees and to terminate the services of direct recruits. It may be noted that no affidavit-in-reply has been filed by the respondents nos.2 and 3 in either of the petitions.

4. In Special Civil Application no.8358 of 1990 filed by the promotees, it is stated that they have been promoted while they are on the verge of retirement. These petitions were filed in the year 1990, and in all probability, the petitioners in Special Civil Application no.8358 of 1990 must have superannuated by now. It can also be noted that in Special Civil Application no.8358 of 1990, on 3rd December, 1990 while admitting the petition, it was ordered to be heard with Special Civil Application no.6584 of 1990, and the respondents were directed to maintain status quo qua the petitioners till 11th December, 1990. The said order was continued from time to time, and finally on 18th December, 1990 the status quo order was directed to continue until further

orders.

5. In Special Civil Application no.6584 of 1990 also on 23rd November, 1990 while admitting the matter, the petitioners were granted interim relief in terms of paragraph 11 (C) by which the respondents were directed to allow the petitioners to serve in the post of Inspector despite order Annexure "C" collectively. Thus, from 1990 by virtue of the interim orders passed by this Court, the petitioners have been protected against their reversions or terminations. As observed earlier, in all probability, all the petitioners in Special Civil Application no.8358 of 1990 would have superannuated by now. In case of petitioners in Special Civil Application no.6584 of 1990 also, they have worked for more than 14 years when these petitions are being heard finally. In absence of any affidavit-in-reply, it is not possible for this Court to come to any definite conclusion that for want of availability of vacancies, the petitioners services are required to be terminated. At the same time, if there are no vacancies with the respondents, and if the petitioners are some of the juniormost officers, their services also cannot be protected permanently. In this view of the matter, I am of the view that respondents cannot be permitted to implement the impugned orders Annexure "C" collectively in Special Civil Application no.6584 of 1990, seeking to terminate the services of the petitioners therein; nor can the respondents be permitted to revert the petitioners of Special Civil Application no.8358 of 1990, if any of them is still in active service.

5. In the result, the petitions are allowed. The impugned orders Annexure "C" collectively in Special Civil Application no.6584/1990 are quashed and set aside. In so far as Special Civil Application no.8358 of 1990 is concerned, the respondents are prevented from reverting the petitioners if any of them is still in active service.

6. Despite the above order, it will be open for the respondents nos.2 and 3 to take fresh action for termination/reversion of all or any of the petitioners, if on fresh consideration of vacancies available, the respondents come to the conclusion that looking to the number of vacancies available, it is not possible to accommodate all the petitioners herein. In the peculiar facts of the present case, however, it is directed that before passing any fresh order of termination, the respondents nos.2 and 3 will give an opportunity of hearing to the concerned petitioners whose services are

likely to be terminated.

7. In view of the above observations and directions, the petitions succeed. Rule is made absolute in each of the petitions to the above extent. No orders as to costs.

8. In view of the order passed in Special Civil Application no.6584 of 1990, Civil Application no.7964 of 1990 does not survive, and is disposed of accordingly.

(Akil Kureshi,J.)
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